
IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
NORTHERN DIVISION

UNITED STATES OF AMERICA,	:	Civil Nos. 1:07 CV89 TC
Petitioner,	:	REPORT AND
	:	RECOMMENDATION
vs.	:	
JON T. MCBRIDE,	:	Honorable Tena Campbell
	:	Magistrate Judge David Nuffer
Respondent.	:	

The United States of America filed a petition to enforce its two April 19, 2007 IRS Summonses pursuant to [26 U.S.C. §§ 7402\(b\)](#) and 7604(a). The first summons sought Respondent's financial information for the tax year 2005. Mr. McBride has complied with this summons, which is no longer at issue. The second summons ("the Summons") sought Respondent's recent financial information to determine whether and to what extent IRS could collect from Respondent an outstanding tax debt that is currently due and owing to IRS. Judge Campbell issued an Order to Show Cause ("OTSC") on June 29, 2007, which referred this matter to the undersigned under [28 U.S.C. § 636\(b\)\(3\)](#).

In the OTSC, Respondent was directed to file a written response supported by sworn affidavits to the United States' Petition to Enforce the Summons ("the Petition") within ten days of the OTSC being served upon him. The OTSC informed Respondent that only those issues raised in the written response and supported by sworn affidavits would be considered by the Court and that all allegations in the Petition not contested by the written response and sworn statements would be deemed admitted. The OTSC also directed the undersigned to convene a

hearing on August 21, 2007 at 10:00 a.m. to hear any arguments that would assist the undersigned in determining whether Respondent has shown cause. On August 10, 2007, Respondent filed a document with this Court, which contained arguments that have been rejected as patently frivolous. Also, at Respondent's behest, this Court rescheduled the August 21, 2007 hearing for August 13, 2007. However, Respondent failed to appear. After learning of this Court's intention to issue a bench warrant for Respondent's failure to appear at the August 13, 2007 hearing, Respondent requested that this Court reconvene the hearing in this matter on August 20, 2007. On that date, the magistrate judge convened a hearing at which Respondent was present appearing pro se, and Petitioner was present appearing through Assistant United States Attorney Jared C. Bennett.

At the hearing, Respondent presented new arguments never disclosed theretofore. Specifically, Respondent argued that the tax liability on which IRS seeks to collect was based on an assessed tax debt of a partnership that Respondent formed part. Respondent asserts that the partnership to which he belonged disputes some of the taxes that IRS has assessed to it. Therefore, Respondent argues, he should not have to provide IRS with financial information that would help IRS determine whether and to what extent it can collect from Respondent until after the partnership's tax appeal is fully and finally resolved. The magistrate judge asked Respondent to set forth this argument raised at the August 20th hearing in a legal memorandum by August 24, 2007. The magistrate judge also ordered the United States to respond to Respondent's legal memorandum by August 31, 2007. Both parties timely filed their memoranda in support of their respective legal positions.

Based on the arguments and representations presented in the Petition, at the August 20, 2007 hearing, and in the parties' legal memoranda, the undersigned reports the following:

1. The United States carried its burden of proof to enforce the Summons. Through the Summons and the declaration of the revenue officer that were attached to the Petition, the United States established that: (1) it sought the summoned information for a legitimate purpose, (2) the summoned information is relevant to the legitimate purpose, (3) the summoned information was not already in the possession of the United States; and (4) that the United States followed proper administrative procedures.

2. Once the United States established its initial burden of proof, the burden shifts to Respondent to show why he should not be compelled to comply with the Summons. Respondent provided a written response to the OTSC and the Petition, however, the legal arguments contained therein have all been rejected by several courts as patently frivolous. See, e.g., Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990); United States v. Webb, 2007 WL 632572, *1 (5th Cir. Feb. 28, 2007) (rejecting argument as frivolous that "United States District Courts are unconstitutional as only the 'district court of the United States' are valid"); Sec. & Exch. Comm'n. 160 Fed. Appx. 368, 370 (5th Cir. 2005) (same). Further, the legal arguments that Respondent provided for the first time at the hearing were untimely pursuant to the Order to Show Cause. In any event, even if Respondent's legal arguments are considered on their merits, they are insufficient to justify his failure to comply with the Summons for the reasons provided in the United States' "Response Memorandum."

Consequently, the undersigned recommends that:

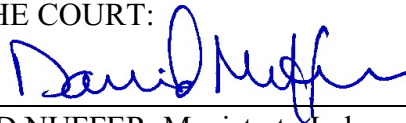
1. The District Court find that Respondent has failed to show cause why he should not be compelled to comply with the Summons; and

2. The District Court order Respondent to provide the IRS with the information required by the Summonses within 10 days from the date that the District Court adopts this Report and Recommendation. The IRS offices are located at 50 South 200 East, Salt Lake City, Utah 84111.

Within 10 days after being served with a copy of this Report and Recommendation, a party may serve and file specific, written objections. A party may respond to another party's objections within 10 days after being served with a copy thereof. Pursuant to [28 U.S.C. § 636\(b\)\(1\)\(C\)](#), the District Judge to whom this case is assigned shall make a de novo determination upon the record of any portion of the undersigned's disposition to which specific written objection has been made. The District Judge may accept, reject, or modify the recommended decision, receive further evidence, or re-commit the matter to the magistrate judge with instructions.

DATED this 23rd day of September 2007.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

DAVID NUFFER, Magistrate Judge
United States District Court

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office for the District of Utah, and that a copy of the foregoing **REPORT AND RECOMMENDATION** was e-mailed and mailed this 28th day of August 2007 to the following:

Jon T. McBride (theclip@xmission.com)
P.O. Box 440
Kaysville, UT 84037

/s/ Jared C. Bennett